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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES H. KAUFMAN, REINER KRAFT, and JOANN RUVOLO

Appeal 2007-2587
Application 09/903360
Technology Center 3600

Decided: February 28, 2008

Before MURRIEL E. CRAWFORD, JENNIFER D. BAHR, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-4, 6-13, 19-24, 26, 29 and 30. We have jurisdiction under 35 U.S.C. § 6(b). (2002)

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants' claim is to event-driven automated notification which is said to be an automated notification system and associated method for obtaining services, or surrogates in response to a disruption of the normal chain of events of a user. (Specification 1:9-12)

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A processor-implemented method to automatically assist a user recover from an unexpected disruption of service, upon receiving a user request for assistance, comprising:
a surrogate interface retrieving a list of candidate helpers; automatically determining the user's current location; wherein for each candidate helper, a calendar interface, a location interface, a profile interface, and a status interface automatically determining the following: current location, capability, suitability, and calendar events for each candidate helper;
based on the calendar events, automatically projecting a physical location of each candidate helper, at a projected assistance period, for rendering service to the user;
if the projected physical location for each candidate helper is determined to be suitable, further determining other obligations for said each candidate helper during the assistance period; and

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wherein if the other obligations of said each candidate helper are determined to be acceptable, automatically dispatching one or more candidate helpers from the list of candidate helpers.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Suman	US 6,028,537	Feb. 22, 2000
Omeara	US 2002/0077876 A1	Jun. 20, 2002
Lockwood	US 6,694,234 B2	Feb. 17, 2004

The following rejections are before us for review.

1. Claims 1, 8, 10, 12, 19, 26 and 30 stand rejected under 35 U.S.C. § 112, second paragraph.
2. Claims 1, 8-11, 19-23, 24, 26 and 29-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Meara.
3. Claims 2-4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Meara in view of Lockwood.
4. Claims 6, 7 and 12, 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Meara in view of Suman.

ISSUE

The first issue is whether claims 1, 19 and 26 were properly rejected under 35 U.S.C. § 112, second paragraph because of the use of the words "suitable" and "acceptable" in claims 1, 19 and 26.

The second issue is whether Appellants have sustained their burden of showing that the Examiner erred in rejecting the claims on appeal as being

unpatentable under 35 U.S.C. § 103(a) over O’Meara because, allegedly, O’Meara fails to describe the claimed process sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it.

FINDINGS OF FACT

1. The Specification describes that a database, “...which forms part of the server module 150, designates a number of potential candidates (perhaps co-workers of User A), represented, for example, by helper modules 351, 352) and who might reasonably be able to deviate from their normal routes, pick up User A at his or her current location and, thus, provide the required transportation to the work site.” (Specification 6:22-26).
2. The Specification in the example given on pages 6-7, describes “calendar events” as those events/information which are/is used to determine a potential helper’s current schedule (Specification 6:29). The Specification also describes using calendar events or information “to determine the current schedule” of helper candidates to define their normal routes, and to thereby designate those candidates who reasonably might be able to deviate from their normal routes. (Specification 6:21-29)
3. O’Meara describes that “it is important to choose the most suitable person to respond to a request for repair services (which generally means the person

who can first arrive at the location where the repair is required)”. (O’Meara, ¶[0005], ll. 5-8).

4. O’Meara describes that “[b]y keeping track of the locations and times at which agents will be free, and by deciding in advance which locations each agent is best able to service, orders can be promptly processed and assigned to the most suitable agent.” (O’Meara, ¶[0015]).
5. O’Meara describes that the helper candidates are other taxis who take orders from a common dispatcher in that “[w]hen a customer requests the provision of a service from a mobile agent such as a taxi, a call can be made directly to a driver of a taxi, but more commonly, one will call an ordering service responsible for assigning orders to a number of taxis which subscribe to or are employed by the ordering service.” (O’Meara, ¶[0002]).
6. O’Meara describes prioritization of agent taxi drivers as helper candidates based upon the list of assigned orders or pick ups remaining for each driver, e.g., calendar of events for that day, such that “...an agent who is some time away from finishing all currently assigned orders will tend to have a lower priority rating for all locations in the listing. As time progresses and the agent nears completion, the priority ratings will all rise. Similarly, if the agent's final current destination is remote from some of the location listings

but close to others, the priority for those remote locations will be lower than for the closer locations.” (O’Meara, ¶[0031]).

7. O’Meara discloses determining potential helper candidates using the combined factors of 1) agent location and 2) the priority ratings (FF 6) determined by tasks or events still remaining on the agent’s calendar for the day. (O’Meara, ¶[0020], 11.5-8)

PRINCIPLES OF LAW

We begin with the language of the claims. The general rule is that terms in the claim are to be given their ordinary and accustomed meaning. *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999). In the United States Patent and Trademark Office (USPTO), claims are construed giving their broadest reasonable interpretation.

[T]he Board is required to use a different standard for construing claims than that used by district courts. We have held that it is error for the Board to “appl[y] the mode of claim interpretation that is used by courts in litigation, when interpreting the claims of issued patents in connection with determinations of infringement and validity.” *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320 (Fed. Cir. 1989); accord *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023 (Fed. Cir. 1997) (“It would be inconsistent with the role assigned to the PTO in issuing a patent to require it to interpret claims in the same manner as judges who, post-issuance, operate under the assumption the patent is valid.”). Instead, as we explained above, the PTO is obligated to give claims their broadest reasonable interpretation during examination.

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In re Am. Acad. of Sci. Tech Ctr., 367 F.3d 1359, 1364, 70 USPQ2d 1827, 1830
(Fed. Cir. 2004).

The test for definiteness under 35 U.S.C. § 112, second paragraph, is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.” *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986) (citations omitted).

A claimed invention is unpatentable if the differences between it and the prior art are “such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.” 35 U.S.C. § 103(a) (2000); *KSR Int’l v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14, 148 USPQ 459, 465 (1966).

In *Graham*, the Court held that that the obviousness analysis is bottomed on several basic factual inquiries: “[(1)] the scope and content of the prior art are to be determined; [(2)] differences between the prior art and the claims at issue are to be ascertained; and [(3)] the level of ordinary skill in the pertinent art resolved.” 383 U.S. at 17, 148 USPQ at 467. *See also KSR Int’l v. Teleflex Inc.*, 127 S.Ct. at 1734 82 USPQ2d at 1391. “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, at 1739, 82 USPQ2d at 1396.

“The reference[s] must describe the applicant's claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it. *Akzo N.V. v. United States Int'l Trade Comm'n*, 808 F.2d 1471, 1479 (Fed.Cir. 1986).

ANALYSIS

The Rejection Based on Second Paragraph of 35 U.S.C. § 112:

We cannot sustain the rejection of claims 1, 19 and 26 under 35 U.S.C. § 112, second paragraph.

We find that one skilled in the art would understand what is meant by the words “suitable” and “acceptable” as used in claims 1, 19 and 26 when read in light of the Specification. In the case of the word “suitable” used in the claims to describe the projected physical location of a candidate, the Specification describes such candidates as those “...who might reasonably be able to deviate from their normal routes, [and] pick up User A at his or her current location....” (Specification 6:24, 25) Similarly, in the case of the word “acceptable”, the Specification describes that a deviation from normal routes, e.g. other obligations, if reasonable, would also categorize a candidate as an acceptable helper. (Specification 6:24, 25)

The terms “suitable” and “acceptable” are not quantified, and the specific criteria for determining suitability and acceptability are not defined in the claims. Therefore, the claims are sufficiently broad to cover any determination of suitable physical location, regardless of criteria used to so determine, and to cover any

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determination of acceptable other obligations, regardless of criteria used. The fact that a claim is broad, however, does not necessarily make it indefinite. *See In re Johnson*, 558 F.2d 1008, 1016 n.17 (CCPA 1977); *In re Miller*, 441 F.2d 689, 693 (CCPA 1971); *In re Gardner*, 427 F.2d 786, 788 (CCPA 1970)

Finally, we note that the phrase "sending the notification of the service disruption" in claims 8, 10, and 12, has been changed by amendment to avoid the antecedent basis problem which was raised by the Examiner in the Final Action dated December 5, 2007. While the step of "sending" user request for assistance referred to in claims 8, 10, and 12 does not find strict antecedent basis in claim 1, from which these claims depend, this does not render the claims indefinite. It is apparent that claims 8, 10, and 12 refer back to the user request for assistance referred to in claim 1. We find that a person of ordinary skill in the art, like the Examiner (Answer 4) would understand each of claims 8, 10, and 12 to recite "wherein the user request for assistance includes sending" The Examiner has withdrawn the objection to claim 30 based on the Amendment made to claim 29. (Answer 19) This amendment likewise resolves the antecedent basis issue raised by the Examiner with respect to claim 30 in the rejection under 35 U.S.C. 112, second paragraph.

The Rejection Based on 35 U.S.C. § 103(a)

Appellants argue claims 1, 8-11, 19-23, 24, 26 as a group. We select claim 1 as the representative claim for this group, and the remaining independent claims 19 and 26 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

For the reasons that follow, we sustain the Examiner's rejection of claims 1, 8-11, 19-23, 24, 26 and 29-30 under 35 U.S.C. § 103(a) as being unpatentable over O'Meara.

Appellants challenge the 35 U.S.C. § 103(a) rejection based on O'Meara alleging three insufficiencies: i) O'Meara "... does not combine the location based service with the calendaring events..." (Appeal Br. 13); ii) "...O'Meara does not teach the use of calendar events to automatically project the physical location of each candidate helper, at a projected assistance period, for rendering service to the user..." (Appeal Br. 14, emphasis original); iii) "O'Meara does not describe if the projected physical location that is based on the calendar events for each candidate helper is determined to be suitable, then determining other obligations for each candidate helper during the assistance period that is based on the calendar events." (Appeal Br. 14, emphasis original) We disagree.

We begin by interpreting the term "calendar events". Based on the example given in the Specification on pages 6-7, we interpret the term "calendar events" to mean those events which are used to determine a potential helper's current schedule (FF 2). The Specification also describes using calendar events or

information “to determine the current schedule” of helper candidates to define their normal routes, and to thereby designate those candidates who reasonably might be able to deviate from their normal routes. *Id.* Thus, calendar events can be defined by drivers’ known normal routes.

i) Contrary to Appellants’ assertion, we do find that O’Meara combines the location of a driver and the calendar of tasks scheduled for that agent to determine whether a given driver can help service an order (FF 7). Thus, an agent in O’Meara who would otherwise qualify based on location would not be selected if his assigned tasks for that day are far from completion (FF 6).

In O’Meara, the calendaring events part of the determination process is described as part of a prioritization process. (FF 6) Here, an agent taxi driver is prioritized as a helper candidate dependent upon the list or assigned orders or pick ups that that a driver has unfinished (FF6). This list of assignments orders constitutes, in the case of a taxi, routes, which, as discussed *supra*, are the exact type of events which control prioritization of helpers described in the Specification (FF 2). Further the list of assigned routes in O’Meara, when taken relative to a given day, become a calendar of events for that taxi for that day as required by claim 1. Still further, O’Meara discloses that its candidate helpers are coworkers, e.g. other taxi drivers (FF 5), thereby further identifying with the same type candidates, i.e., co-workers, described in Specification (FF1). We therefore conclude that O’Meara discloses using both location and calendar events to determine which helper candidates are most suitable to provide service to the same extent as described in the Specification.

Appellants however argue that O'Meara at paragraph [0016], which was relied on by the Examiner, does not disclose combining location with calendaring events. (Appeal Br. 13) However, what Appellants fail to appreciate here is that paragraph [0016] is a conclusory paragraph to paragraph [0015]. It is clear from paragraph [0015] that the locations discussed in paragraph [0016] are the result of determining anticipated "times at which agents will be free" and "deciding in advance" (FF 4) where the agent will be based on schedule monitoring, and thus such determinations are not merely based on real time location tracking.

ii) We further disagree that O'Meara fails to disclose projecting the physical location of each candidate helper at a projected assistance period. As found *supra* (FF 3), in order to secure assistance, O'Meara chooses the most suitable person to respond to a request for services, which generally means the person who can first arrive at the location where the repair is required. Thus, in O'Meara a projected assistance period is disclosed and is defined by the helper candidate who can first arrive at the location where help is needed.

iii. We reject the argument that O'Meara does not disclose once finding acceptable helper candidates, then determining other obligations for each candidate helper during the assistance period that is based on the calendar events. As found *supra* (FF6), O'Meara prioritizes and determines an agent's other obligations insofar as determining how far from finishing all currently assigned orders that agent has progressed, and based on this determination, ranks that agent relative to other potential helper agents.

Claims 2-4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Meara in view of Lockwood. However Appellants indicate that the allowability of these claims depends on the allowability of claim 1 (Appeal Br. 15). We therefore likewise sustain the rejection of claims 2-4 under 35 U.S.C. § 103(a) based on O'Meara in view of Lockwood for the reasons provided *supra* for claim 1.

Claims 6, 7, 12, 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Meara in view of Suman. However Appellants indicate that the allowability of these claims depend on the allowability of claim 1 (Appeal Br. 15). We therefore likewise sustain the rejection of claims 6, 7, 12, 13 under 35 U.S.C. § 103(a) based on O'Meara in view of Suman for the reasons provided *supra* for claim 1.

CONCLUSIONS OF LAW

We will not sustain the rejection of claims 1, 8, 10, 12, 19, 26 and 30 under 35 U.S.C. § 112, second paragraph.

We sustain the Examiner's rejection of claims 1, 8-11, 19-23, 24, 26 and 29-30 under 35 U.S.C. § 103(a) as being unpatentable over O'Meara.

We sustain the rejection of claims 2-4 under 35 U.S.C. § 103(a) based on O'Meara in view of Lockwood.

We sustain the rejection of claims 6, 7, 12, and 13 under 35 U.S.C. § 103(a) based on O'Meara in view of Suman.

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DECISION

The decision of the Examiner to reject claims 1, 8, 10, 12, 19, 26 and 30 under 35 U.S.C. § 112, second paragraph is reversed.

The decision of the Examiner to reject claims 1, 8-11, 19-23, 24, 26 and 29-30 under 35 U.S.C. § 103(a) as being unpatentable over O'Meara is affirmed.

The decision of the Examiner to reject claims 2-4 under 35 U.S.C. § 103(a) based on O'Meara in view of Lockwood is affirmed.

The decision of the Examiner to reject claims 6-7, 12-13 under 35 U.S.C. § 103(a) based on O'Meara in view of Suman is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

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